

THE HON'BLE SRI JUSTICE T.CH.SURYA RAO

AND

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

Writ Petition No.18793 of 2001

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ORDER: (per the Hon'ble Sri Justice T.Ch.Surya Rao)

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The State is the Writ Petitioner. It seeks to assail the order, dated 04-02-2000, passed by the learned Special Court in L.G.C.No.193 of 1996, by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, for issuing the necessary prerogative writ, more particularly the writ of Certiorari.

It is the case of the State that the respondent herein is the land grabber and occupied the land of the Government to an extent of 1950 square yards, covered by Sy.No.741, situate in Urus Village, within the limits of Warangal Municipal Corporation.

That application was resisted by the respondent on the ground that the land in question is situate in a jagir village and jagirs were abolished in 1356 Fasli by virtue of the abolition of Jagirs Regulation, 1358, and all those persons, who held jagir lands in non-khalsa (non-Government) villages, were conferred pattadar rights and that during the years 1933-1934, while the respondent was a minor, his father, by name, K.Ashalu, purchased the land in total extent of 1950 square yards together with the structures existing thereon under three separate registered sale deeds from lawful owners of the said property for valid consideration and since then they have been in possession and enjoyment of the same and therefore the respondent was not a land grabber.

The Special Court framed as many as 7 issues basing on the pleas taken on either side; they are:

- “ 1) Whether the applicant is the owner of the application
schedule property?
- 2) Whether the respondent has title to the application
schedule land?
- 3) Whether the respondent has perfected title to the
application schedule land by adverse possession?
- 4) Whether the applicant is entitled for compensation as
claimed by the applicant?
- 5) Whether the applicant is entitled for any mesne profits, if
so, for what amount?
- 6) Whether the respondent is liable to be prosecuted
for the offence under Sections 4 and 5 of the A.P.L.G. (P)
Act XII of 1982?
- 7) To what relief?”

During the course of the enquiry, two witnesses were examined on the side of the applicant, besides getting Exs.A1 to A7 marked. Three witnesses were examined on the side of the respondent, apart from getting marked Exs.B1 to B161. On an appreciation of evidence adduced on either side, both oral and documentary, the learned Special Court was of the considered view on issues 1 to 3 that application schedule land, which formed part of Sy.No.741 of Urus village was *prima facie* proved to be owned by the Government and that the respondent failed to prove the title of his vendor and notwithstanding the same, having regard to the continuous, peaceful, open and exclusive possession of the property for more than the statutory period, the respondent perfected the title by means of adverse possession. Eventually, the Special Court dismissed the petition, under those circumstances. As aforesaid, it is now being assailed before us.

The matter may not detain us any longer, having regard to the change in the law by

a recent pronouncement of the Apex Court in *N.Srinivasa Rao v. Special Court Under A.P. Land Grabbing (Prohibition) Act* . In the middle of para 47, the Apex Court held thus:

“In our view, in a proceeding before the Special Court the only issue which falls for decision is whether there has been an act of land grabbing as alleged and who is the guilty party. The Special Court has no jurisdiction to decide questions relating to acquisition of title by adverse possession in a proceeding under the Act as the same would fall within the domain of the Civil Courts.”

Having regard to the authoritative pronouncement of the Apex Court, the finding of the learned Special Court that the respondent herein perfected his title by adverse possession is obviously a finding given by the Special Court without having the necessary jurisdiction.

The jurisdiction conferred upon the Special Court lies in a narrow compass and is only to the extent of seeing whether there has been an act of land grabbing as alleged and who is the guilty party.

Section 2 (e) of the A.P. Land Grabbing (Prohibition) Act, 1982, seeks to define the expression ‘land grabbing’ thus:

“2 (e) “*land grabbing*” means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person) by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands, or enter into or create illegal tenancies or lease and licences agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give such lands to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorized structures; and the term “to grab land” shall be construed accordingly;”

The provision postulates that every act of grabbing land without any lawful entitlement and with a view to illegally taking possession of the land is said to be an act of land grabbing. As can be seen from the said provision, it requires two acts so as to complete the action of land grabbing, namely, that there must be taking of illegal possession of lands and that taking of possession must be without any lawful entitlement.

A larger bench of this Court in *Hindustan Aeronautics Employees Co-operative Housing Society Limited, Hyderabad v. Special Court (Land Grabbing)* has also dealt with the same issue. In para 40 of the judgment it was held thus:

“A reading of the above paragraphs discloses that to invoke the provisions of the Act, it must be shown and established that the person accused of the offence under the Act, has taken unauthorisedly, greedily, snatched forcibly, violently, unscrupulously, any land whether belonging to Government, local authority, statutory agencies or private individuals, and that such act is without any lawful entitlement and with a view to undertake various objectionable activities referred to in the Act.”

It is thus obvious that the jurisdiction of the Special Court or as a matter of that the Special Tribunal constituted under the provisions of the A.P. Land Grabbing (Prohibition) Act is limited and lies in a narrow compass to see whether there has been any act of land grabbing committed by the respondent or not and the intricate questions of title of the respondent by means of adverse possession cannot be adverted to and adjudicated upon.

Keeping in view the above position of law, let us see whether the petitioner-State has proved *prima facie* the act of land grabbing. While it is the case of the State that the land in dispute, covered by Sy.No.741, situate in Urus Village, is a Government poramboke land having thus been recorded in various revenue records, it is the clear case of the respondent that the land in question having been situated in a jagir village and jagirdars having conferred title or pattas in non-khalsa villages, vendor of the respondent's father derived title thus and he in turn by means of a registered sale deed, executed way back in the year 1933, conveyed the property in favour of the father of the respondent and since then the father of the respondent and after him, the respondent, for more than a period of five decades, have been in continuous possession and enjoyment of the same by raising permanent structures thereon and even otherwise by virtue of their long possession he perfected title by adverse possession. The plea of the respondent appears to be two-fold; firstly, that he has set up independent title over the property and secondly, that even otherwise he perfected his title by means of adverse possession. Of course, both cannot co-exist. Parties can be permitted to take alternative pleas only. Having regard to the above pleas taken by either parties, it is to be seen whether the respondent has committed an act of land grabbing or not, which alone shall have to be pleaded and proved and

which in fact confers jurisdiction upon the Special Court or the Special Tribunal, as the case may be, to adjudicate the dispute.

It is now well settled that the entries made in the revenue records alone, without there being any supporting evidence, cannot confer title, albeit they can be invoked to raise the necessary presumption. Presumption is again a rebuttable one and is not conclusive. The entries thus made in Exs.A3, A4 and A5, obviously cannot confer title on the Government. Of course, it is quite clear that the State cannot have any conveyance deed in its favour in respect of the land in question. Nonetheless, the question is got to be decided by going into the effect of the abolition of jagirs, having regard to the fact that the land in question is obviously a land situate in a jagir, which has been subsequently abolished. The antecedent title of the parties, who are found to be in possession, vis-à-vis the act of the State, by seeking to abolish the jagirs, shall have to be balanced while seeking to adjudicate the complex question of title. Such a direction shall always and in all circumstances continues to vest and well within the domain of the civil Court. If any enactment is expropriate in nature, the provision thereof shall have to be considered carefully to see whether the Act clearly envisages such vestiture of rights over the lands in the State and the Act provides for the necessary machinery to adjudicate the disputes between the individuals *inter se* or in between the State and its subject *uno flatu*, along with the Civil Court; then the jurisdiction of the Civil Court is considered to or impliedly barred, otherwise the question to decide the antecedent or pre-existing title shall always remain with the Civil Court.

Here, in the instant case, the plea of the respondent was that the jagirdar, before the abolition of the jagir, conferred pattas in respect of non-khalsa lands and thus the land in question was given patta to the vendor of the father of the respondent by the erstwhile jagirdar and that the father of the respondent purchased the said land by means of a registered sale deed. The question as regards the validity of the transaction under which the respondent's father sought to purchase the land *qua* the consequence of the abolition of the jagir shall again falls within the domain of the Civil Court. At any rate, it is obviously not within the jurisdiction of the Special Court or the Special Tribunal, as the case may be. Precisely that is the question that has got to be adjudicated in the instant case and therefore no attempt can legitimately be made in that regard by the Special Court to decide the antecedent or pre-existing

title. As discussed hereinabove, a limited area, which is available to the Special Court, is to see whether the respondent has committed an act of land grabbing. To answer the said question, it must be pleaded and established that the initial entry into the land in dispute by the respondent was unlawful, unscrupulous and that was without any lawful entitlement thereto with a view to commit the other acts of raising structures or leasing out the land or of that sort etc., Having regard to the nature of the plea taken by the respondent and in view of the finding of the Special Court *inter alia* in the impugned order, it is visibly clear that the act of the respondent cannot fall within the purview of the vice of the act of land grabbing. On that jurisdictional issue alone the writ petition must fail.

It may be mentioned here that any observations made by this Court touching upon the complex issue of title will not have any bearing when the matter is taken to a competent Civil Court for adjudication of the title and the Civil Court will be at liberty to adjudicate the same without being influenced, in any manner, by any of the observations made *inter alia* in this order and independently by passing appropriate orders on merits.

For the above reasons, the Writ Petition fails and is dismissed. Under the circumstances, no order as to costs.

T.CH.SURYA RAO, J.

G.CHANDRAIAH, J.

09th June, 2006.

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AND

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Writ Petition No.18793 of 2001

(per the Hon'ble Sri Justice T.Ch.Surya Rao)

Dated 09th June, 2006

Between:

Government of Andhra Pradesh,

Rep. by its Revenue Divisional Officer,

Warangal, Warangal District. .. Petitioner

and

Kunchu Rajveer, S/o Ashalu,

Aged about 80 years, R/o II.No.16-5-6,

Perukawada, Warangal and another .. Respondents